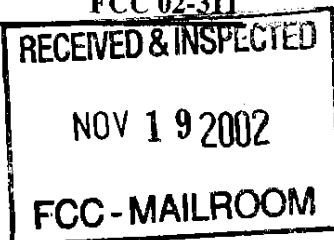


Federal Communications Commission

FCC 02-311

Before the
Federal Communications Commission
Washington, D.C. 20554



In the Matter of

Disposition of Down Payment and Pending)	
Applications By Certain Winning Bidders in)	WT Docket No. 02-276
Auction No. 35)	
)	
Requests for Refunds of Down Payments)	
Made In Auction No. 35)	

ORDER AND ORDER ON RECONSIDERATION

Adopted: November 14, 2002

Released: November 14, 2002

By the Commission: Chairman Powell and Commissioner Abemathy issuing separate statements; Commissioner Martin approving in **part**, dissenting in part, and issuing a statement.

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I. INTRODUCTION AND SUMMARY

I. In this Order, we resolve the issues raised in our September 12, 2002 *Public Notice*¹ and grant relief to eligible winning bidders in Auction No. 35 ("Eligible Auction 35 Winners")² with respect

¹ "Commission Seeks Comment On Disposition Of Down Payments And Pending Applications For Licenses Won During Auction No. 35 For Spectrum Formerly Licensed To NextWave Personal Communications Inc., NextWave Power Partners, Inc. And Urban Comm -- North Carolina, Inc.," *Public Notice*, FCC 02-248 (rel. Sept. 12, 2002); *Erratum* (rel. Sept. 12, 2002) ("*Public Notice*"). A list of the parties that filed comments, reply comments, and *ex parte* notices in this proceeding, and the abbreviations used to refer to such parties, is attached at Appendix A.

² An "Eligible Auction 35 Winner" is a winning bidder in Auction No. 35 with a pending application(s) for license(s) of spectrum that **was** previously licensed to NextWave Personal Communications Inc., NextWave (continued...)

to spectrum associated with licenses that had previously been issued to NextWave Personal Communications Inc., NextWave Power Partners Inc. (collectively "NextWave") and Urban Comm-North Carolina, Inc. ("Urban Comm"). Specifically, we will dismiss long-form applications for this spectrum and refund associated down payments, as follows:

- **Single election for dismissal of all applications.** Pursuant to an election by Eligible Auction 35 Winners, we will dismiss with prejudice pending Auction No. 35 long-form applications for spectrum associated with licenses previously issued to NextWave and Urban Comm ("Pending Applications").³ Each winning bidder must make a **single election** covering all of the licenses designated in its Pending Application(s) for licenses of NextWave/Urban Comm spectrum to obtain such relief.
- **Refund of deposits and waiver of default rules; no restrictions on future license acquisition.** We will refund to payors of record pursuant to appropriate instructions down payments associated with the dismissed applications; will waive default rules; and will not impose any restrictions based on this relief on these bidders' ability to acquire spectrum in future auctions.

We believe the public interest is served by this plan of relief, which provides Eligible Auction 35 Winners an opportunity for finality and certainty with respect to all obligations involving the NextWave/Urban Comm Spectrum. In addition, we delegate to the Wireless Telecommunications Bureau ("Bureau") and the Office of Managing Director the authority and responsibility for expeditiously implementing this Order and the accompanying procedures outlined in the Public Notice attached at Appendix B.

II. BACKGROUND

2. Thirty-five bidders won 422 Personal Communications Services ("PCS") licenses in the C and F spectrum blocks for a total of approximately \$16.9 billion dollars in net bids in Auction No. 35.⁴ The spectrum associated with 259 of the licenses sold in Auction No. 35 had been previously licensed to either NextWave or Urban Comm.⁵ Pursuant to Commission rules, these licenses automatically cancelled due to non-payment of the associated license payments by NextWave and Urban Comm.⁶

(Continued from previous page) _____

Power Partners Inc. (collectively "NextWave") and Urban Comm-North Carolina, Inc. ("Urban Comm"), and is now subject to the NextWave litigation and Urban Comm proceedings ("NextWave/Urban Comm Spectrum").

³ We note that, under the Commission's rules, applicants for licenses won at an auction may file a single application for numerous licenses. Accordingly, as used in this Order, "Pending Application(s)" refers to long-form application(s) on file with respect to licenses won at auction by Eligible Auction 35 Winners for NextWave/Urban Comm Spectrum.

⁴ C and F Block Broadband PCS Auction Closes; Winning Bidders Announced; Down Payments Due February 12, 2001, FCC Forms 601 and 602 Due February 12, 2001; Ten-Day Petition to Deny Period, "Public Notice, DA 01-211 (WTB Jan. 29, 2001).

⁵ NextWave held licenses for spectrum associated with 216 of the licenses sold in Auction No. 35, and Urban Comm held licenses for spectrum associated with 43 of the licenses sold in Auction No. 35. The Commission granted 155 licenses for non-NextWave/Urban Comm Spectrum and over \$500 million in payments were received.

⁶ 47 C.F.R. § 1.2110(e)(4)(iii) (1997).

These defaults occurred after both entities had filed for bankruptcy. Of the 35 winning bidders in Auction No. 35, 22 bidders won licenses for NextWave/Urban Comm Spectrum. The net amount bid for those licenses in Auction No. 35 was approximately **\$16.3**billion. Shortly after the close of the auction, pursuant to Section 1.2107 of the Commission's rules, each winning bidder was required to have on deposit a down payment amount equal to twenty percent of its net winning bids.'

3. After the conclusion of Auction No. 35, the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit"), in *NextWave v. FCC*, ruled that Section 525 of the Bankruptcy Code, which provides that a "governmental unit" may not "revoke" a bankrupt's or debtor's license "solely because such bankrupt or debtor ... has not paid a debt that is dischargeable ... under this title," prevented the cancellation of licenses held by NextWave.' Consistent with the mandate issued by the D.C. Circuit implementing its holding in *NextWave v. FCC*,¹⁰ the Bureau, during this timeframe, returned to active status the licenses that previously had been issued to NextWave, subject to "litigation and/or regulatory matters." The United States and the Commission petitioned the Supreme Court of the United States for writ of certiorari. At the time the writ for certiorari was pending, the U.S. Government, Commission staff, NextWave, and certain Auction No. 35 winners culminated settlement discussions and executed an agreement that was designed to settle the litigation, and permit the award of licenses for the NextWave/Urban Comm Spectrum to the Auction No. 35 winners." However, necessary implementing legislation was not passed. Subsequently, the Supreme Court granted the petition for certiorari and heard oral argument on October 8, 2002.¹⁴ A decision is pending. In addition to being the focus of litigation, NextWave/Urban Comm Spectrum won in Auction No. 35 continues to be the subject

⁷ 47C.F.R. § 1.2107.

⁸ 11 U.S.C. § 525(a).

⁹ *NexrWave Personal Communications Inc. v. FCC*, 254 F.3d 130 (D.C. Cir. 2001), *cert. granted*, ___U.S. ___, 70 U.S.L.W. 3317, 70 U.S.L.W. 3545, 70 U.S.L.W. 3551 (U.S. March 4, 2002) (Nos. 01-653, 01-657) ("*NexrWave v. FCC*"); 11 U.S.C. § 525. *But see NextWave Personal Communications, Inc. and NexrWave Power Partners, Inc. v. FCC*, Nos. 00-1402 and 00-1403 (D.C. Cir. Nov. 13, 2000) (denial of NextWave's motion for stay of Auction No. 35).

¹⁰ *NextWave Personal Communications Inc. v. FCC*, 254 F.3d 130 (D.C. Cir. 2001), *cert. granted*, ___U.S. ___, 70 U.S.L.W. 3317, 70 U.S.L.W. 3545, 70 U.S.L.W. 3551 (U.S. March 4, 2002) (Nos. 01-653, 01-657).

¹¹ "Wireless Telecommunications Bureau Announces the Return to Active Status of Licenses to NextWave Personal Communications Inc. and NextWave Power Partners Inc., Subject to the Outcome of Ongoing Litigation," *Public Notice*, DA 01-2045, 16 FCC Rcd 15970 (WTB Aug. 31, 2001).

¹² *FCC v. NextWave Personal Communications, Inc.*, No. 01-653, *per curiam* writ of certiorari filed (U.S. October 19, 2001). *See also Arctic Slope Regional Corporation, et al., v. NexrWave Personal Communications, Inc.*, No. 01-657, *per curiam* writ of certiorari filed (U.S. October 19, 2001).

¹³ Settlement Agreement By and Among the United States of America, the Federal Communications Commission, NextWave Telecom Inc. and Certain Affiliates, and Participating Auction 35 Winning Bidders (Nov. 15, 2001) ("NextWave Settlement Agreement"). *See also* "Statement of FCC Chairman Michael Powell on Signing of NextWave Settlement Agreement," *News Release* (rel. Nov. 27, 2001).

¹⁴ *NextWave Personal Communications Inc. v. FCC*, 254 F.3d 130 (D.C. Cir. 2001), *cert. granted*, ___U.S. ___, 70 U.S.L.W. 3317, 70 U.S.L.W. 3545, 70 U.S.L.W. 3551 (U.S. March 4, 2002) (Nos. 01-653, 01-657).

of pending regulatory proceedings concerning the previously-granted licenses.¹⁵

4. In February 2002, Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”) filed with the D.C. Circuit Court of Appeals a Petition to Enforce the **Mandate**,¹⁶ arguing that the Commission had violated the D.C. Circuit’s mandate in *NextWave v. FCC* by returning to active status licenses previously issued to NextWave while retaining the related down payments.” Verizon Wireless asked that the Commission be ordered to refund the full amount of Verizon Wireless’s down payment for the NextWave licenses and to confirm that Verizon Wireless’s obligations with respect to Auction No. 35 had been extinguished.” The court denied Verizon Wireless’s petition, stating that the relief sought did not **fall** within its mandate.”

5. In response to a joint request by a group of Auction No. 35 winning bidders, including Verizon Wireless, for a refund of their down payments in that auction? the Commission released an Order (the “**Parrial Refund Order**”) on March 27, 2002, pursuant to which it returned \$2.8 billion, or 85

¹⁵ See, e.g., *NextWave v. FCC; In re Urban Comm-Norrh Carolina, Inc.*, Case No. 98-B- 10086 (REG), Adv. Proc. No. 99/8125A; Applications for Review, dated March 17, 1997 and June 16, 1997, filed by Antigone Communications, L.P. and PCS Devco, Inc.; Petition to Initiate an Investigation and Audit Regarding the Eligibility of NextWave Personal Communications, Inc. and NextWave Power Partners Inc. to Hold C and F Block licenses, filed by Alaska Native Wireless, L.L.C., Verizon Wireless, and VoiceStream Wireless Corporation, dated July 19, 2001; and Petition for Reconsideration, filed by Alaska Native Wireless, L.L.C. and VoiceStream Wireless Corporation, dated October 12, 2001; Petition to Deny Reinstatement of Licenses, filed by Alaska Native Wireless, L.L.C., and VoiceStream Wireless Corporation, dated August 30, 2001.

¹⁶ *NextWave Personal Communications, Inc. v. FCC*, No. 01- 1402. *Petition to Enforce rhe Mandate* (filed February 5, 2002).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *NextWave Personal Communicarions, Inc. v. FCC*, No. 01-1402 (D.C. Cir. March 1, 2002)

²⁰ See *Joint Request for Immediare Refund of Auction No. 35 Down Paymenrs for NexrWave Licenses* filed on January 4, 2002 by 3DL Wireless, LLC, 3G PCS, LLC, Alaska Native Wireless, L.L.C., Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”), Cook Inlet/V5 GSM V PCS, LLC, DCC PCS, Inc., Lafayette Communications Company, L.L.C., Leap Wireless International, Inc., MCG PCS II, Inc., Northcoast Communications, L.L.C., Salmon PCS LLC, SVC BidCo, L.P., and VoiceStream PCS BTA I License Corporation (“Joint Request”). The Commission also responded to an additional nine winning bidders requesting relief but not parties to the Joint Request: Black Crow Wireless, L.P., Mint GSM, Poplar PCS-Central, Scott Reiter, SLO Cellular, Theta Communications, Unbound PCS, LLC, Vincent McBride, and Last Wave Partners, LP. LastWave Partners, LP, Black Crow Wireless, L.P. and Unbound PCS, LLC each filed separate requests for refunds of down payments made in Auction No. 35 for spectrum that was previously licensed to NextWave. *Request For Immediare Refund of Auction No. 35 Down Payment for NextWave License* filed by LastWave Partners, LP on January 7, 2002; *Request for Refund of Downpayments* filed by Black Crow Wireless, L.P. on January 25, 2002; *Requesr for Refund of Downpaymenrs* filed by Unbound PCS, LLC on February 6, 2002. In addition, Vincent McBride and Scott Reiter have filed similar requests for refunds. See letters from Vincent McBride and Scott Reiter to Michael K. Powell, Chairman, Federal Communications Commissions dated July 9, 2001, July 16, 2001, August 25, 2001 and October 22, 2001; see also letter from Donald J. Evans, counsel for Vincent McBride and Scott Reiter, to Kathleen O’Brien Ham, Deputy Chief, Wireless Telecommunications Bureau, dated October 31, 2001.

percent, of the down payments made for the spectrum at issue.²¹ The Commission retained an amount from each bidder's down payment equal to 3 percent of the winning bidder's total **net** bids for the licenses, or a total of \$489,548,061, an amount sufficient to cover possible future default **payments**.²² The Commission rejected the claim made by Verizon Wireless in its letter dated March 5, 2002,²³ holding that Verizon Wireless had assumed a known risk of delay and concluding that Auction No. 35 winning bidders continue to be responsible for paying their full bid **amounts**.²⁴ The Commission also denied an opposition to the Auction No. 35 winning bidders' refund **request** filed by Eldorado Communications, **LLC** ("Eldorado") on the grounds that Eldorado lacked standing to challenge the request for refund.²⁵ Eldorado filed a petition for reconsideration, currently **pending**.²⁶

6. On September 12, 2002, we released a public notice requesting comment on the disposition of both the remaining down payment funds and the Pending **Applications**.²⁷ In response to the **Public Notice**, we have received 23 comments, 12 reply comments, and additional **filings**.²⁸ In this **Order**, we address these comments and resolve the issues raised in the **Public Notice**. We also address Eldorado's pending petition for reconsideration of the **Partial Refund Order**.

III. WITHDRAWAL OF LONG-FORM APPLICATIONS AND REFUND OF DEPOSITS

7. **Background.** We initiated this proceeding out of our concerns about the effect on consumers of the financial health of wireless telecommunications providers in light of the current, sustained economic downturn and its effect on the telecommunications sector, as well as continuing uncertainties arising out of litigation over the subject licenses. In our **Public Notice**, we pointed out that our consideration of any possible relief would have to be balanced against important public interest concerns in maintaining the integrity of our spectrum auction process and program.²⁹

²¹ Requests for Refunds of Down Payments Made In Auction No. 35, **Order**, 17 FCC Rcd 6283 (2002) ("**Partial Refund Order**"), *appeal pending*, *Cellco Partnership d/b/a Verizon Wireless v. FCC* (D.C. Cir. Apr. 8, 2002) (Nos. 02-1110 & 02-1111).

²² See 47 C.F.R. § 1.2104(g). In the event of a default, the Commission retains funds on deposit equal to three percent of the total winning bid amount, and has the discretion to retain an amount of up to twenty percent of the winning bid amount. Amendment of Part I of the Commission's Rules –Competitive Bidding Procedures. Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use. 46604685 MHz, WT Docket No. 97-82, ET Docket No. 94-32, **Third Report and Order and Second Further Notice of Proposed Rule Making**, 13 FCC Rcd 374, 433, ¶ 102 (1998).

²³ Letter to John Rogovin, Deputy General Counsel. Federal Communications Commission, from S. Mark Tuller, Vice President-Legal and External Affairs, General Counsel and Secretary. Verizon Wireless, dated March 5, 2002.

²⁴ **Partial Refund Order**, 17 FCC Rcd at 6290-92 ¶ 12-16.

²⁵ *Id.* at 6284 n.5 and accompanying text

²⁶ Petition for Reconsideration of Eldorado Communications, LLC. (filed April 26, 2002) ("Eldorado Petition").

²⁷ See *supra* note 1

²⁸ See Appendix A (list of commenters).

²⁹ **Public Notice** at 3

8. With regard to possible relief, the **Public Notice** invited comment on certain alternatives for implementing any policy of allowing winning bidders to opt out of the obligations incurred as a result of Auction No. 35.³⁰ In particular, we set out two specific “opt-out” scenarios under which certain bidders might be permitted to seek refunds of remaining amounts deposited in connection with their winning bids and request dismissal of some, or all, of their pending license applications for NextWave/Urban Comm spectrum.” As described below, one scenario provided for a single election, complete dismissal option, while the other described a selective dismissal approach.’* Upon request of an Eligible Auction 35 Winner for dismissal of its Pending Applications for NextWave/Urban Comm Spectrum, the Commission would refund to the payor of record the full amount of monies on deposit for any dismissed applications. The **Public Notice** further stated that applicants that elect to pursue such relief would lose all claims to the Auction No. 35 licenses as to which Eligible Auction 35 Winners sought dismissal of their applications, and would be required to relinquish any other claims arising out of Auction No. 35.” Both scenarios also envision that the Commission would waive, in whole or part, its default rules for all dismissed applications and, subject to coordination with the Department of Justice (pursuant to applicable federal claims collection standards), forgive any debt incurred as a result of Auction No. 35.³⁴ The **Public Notice** also sought comment on whether to bar such entities from acquiring such licenses for some future time period.³⁵ Finally the **Public Notice** inquired whether to require applicants to reaffirm their commitment to their Auction No. 35 obligations should they decide to retain any of their Pending Applications on file.³⁶

9. The principal difference between the two “opt-out” scenarios outlined in the **Public Notice** is whether to allow bidders to seek dismissal of their Pending Application(s) with respect to all NextWave/Urban Comm Spectrum, or to permit a selective dismissal approach, under which an individual applicant could “pick and choose” among the licenses applied for, maintaining its application with respect to some licenses, and not others.³⁷

10. **Decision.** As explained below, we will provide Eligible Auction 35 Winners with the option of withdrawing with prejudice their Pending Application(s) with respect to all NextWave/Urban Comm Spectrum. We have previously found that the Commission is under no legal obligation to provide relief to these bidders who accepted responsibility for the risk (including litigation risk) they assumed by

³⁰ *Id.* at 4-5.

³¹ *Id.*

³² *See id.*

³³ *Id.* at 4-5 and n. 11

³⁴ *Id.* at 4-5 and n. 12 (citing See 4 C.F.R. Parts 101-105; *Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, Second Report and Order, 12 FCC Rcd 16436, 16462-64 ¶¶ 53-58 (1997) (“*C Block Restructuring Order*”); “U.S. Department of Justice Approves Debt Forgiveness for Personal Communications Services (PCS) C Block,” *Public Notice*, DA 98-1051 (June 3, 1998)).

³⁵ *Public Notice* at 4-5.

³⁶ *Id.* at 4.

³⁷ *Id.* at 4-5.

placing their bids on this spectrum.³⁸ However, such relief in this particular instance and at this time is within our discretion and is consistent with our obligations to balance various public interest considerations under the Communications Act of 1934, as amended.” We have recognized that the telecommunications sector is currently weathering economic conditions that threaten negative effects for consumers. Already, hundreds of thousands of telecommunications workers have lost jobs,⁴⁰ the market capitalization of wireless and other communications-related companies has significantly declined,⁴¹ and telecommunications-related bankruptcies have increased.⁴² Mounting debt loads and constricted capital markets are causing telecommunications providers to reign in capital investment that is necessary to develop and deploying new service offerings to consumers, such as those that might be offered using this PCS spectrum.⁴³ Commenters also point out that contingent liabilities from Auction No. 35 affect a

³⁸ See *Partial Refund Order*, 17 FCC Rcd at 6291-92 ¶¶ 14-16. We note that the Bureau explicitly advised potential bidders in Auction No. 35 of their due diligence obligations, cautioning that:

certain judicial proceedings that may relate to the licenses available in Auction No. 35 are pending or may be subject to further review. Resolution of these matters could have an effect on the availability of spectrum included in Auction No. 35 and the auction is subject to such matters. Some of these matters (whether before the Commission or the courts) may not be resolved by the time of the auction. The Commission will continue to act on matters before it, but it makes no representations as to the resolution of judicial proceedings. Potential bidders are solely responsible for identifying associated risks, and investigating and evaluating the degree to which such matters may affect their ability to bid on or otherwise acquire licenses in Auction No. 35.

“C and F Block Broadband PCS Spectrum Auction Scheduled for December 12, 2000; Notice and Filing Requirements for 422 Licenses in the C and F Block Broadband PCS Spectrum Auction; Minimum Opening Bids, Upfront Payments and Other Procedural Issues for Final Auction Inventory,” *Public Notice*, DA 00-2259 15 FCC Rcd 19485, 19493 (WTB Oct. 5, 2000) (emphasis omitted). Similar language was included in two other pre-auction public notices. See “C and F Block Broadband PCS Spectrum Auction Scheduled for November 29, 2000, Rescheduled for December 12, 2000; Revised List of Available Licensees; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Procedural Issues,” *Public Notice*, DA 00-2038, 15 FCC Rcd 17251 (WTB Sept. 6, 2000); “Auction of Licenses for C and F Block Broadband PCS Spectrum; Status of FCC Form 175 Applications to Participate in the Auction,” *Public Notice*, 15 FCC Rcd 22466 (WTB Nov. 17, 2000).

³⁹ See 47 U.S.C. § 309(j). No inference should be drawn from our conclusions in this Order with regard to any pending litigation or other claims by third parties with regard to this spectrum.

⁴⁰ See J. Gregory Sidak, “The Economic Benefits of Permitting Winning Bidders to Opt Out of Auction 35” at 11-12 (dated Aug. 21, 2002) (Criterion Economics: Washington, DC), submitted as Attachment B to Veriaon Comments (“Sidak Study”); BIA Financial Network, “The State of the Telecommunications Industry from March 31st, 2002 With Emphasis on the Wireless Voice Industry” at 21 (BIA Financial Network, dated Oct. 11, 2002), submitted as Exhibit 1 to Salmon Comments (“BIAfn Study”).

⁴¹ See, e.g., Sidak Study at 8-11; BIAfn Study at 4

⁴² The Commission is actively involved in monitoring the financial health of the telecommunications sector and considering how it should best take these factors into account in the regulatory actions and decisions it takes. Among other things, the Commission recently convened an *en banc* hearing that brought together a variety of experts from the financial community and academia to comprehensively assess the current state of the telecommunications sector and to discuss steps needed to restore its financial health. See “FCC To Convene *En Banc* Hearing October 7th On Steps Toward Recovery in the Telecommunications Industry,” *Public Notice*, DA 02-2443 (Sept. 30, 2002).

⁴³ See generally Letter from Secretary of Commerce Donald L. Evans to Chairman Michael K. Powell (Oct. 10, 2002); T-Mobile Comments, at 6-7; Cingular Comments at 5; Cook Inlet Comments at 2-4; CTIA (continued....)

broad segment of the nation's wireless companies,⁴⁴ as well as equipment manufacturers, tower companies, and other related firms.⁴⁵ In a recent letter, 43 Members of Congress expressed similar views, noting that the contingent liability carried on the books of Auction No. 35 bidders "is harming consumers, stifling investment, and slowing potential recovery of this important industry sector."⁴⁶ Since we granted bidders limited relief in our March 2002 *Partial Refund Order*, we have been presented with significant additional evidence that the telecommunications sector is continuing to act as a drag on the economy as a whole, to the detriment of consumers.⁴⁷ Moreover, in that time, increasing numbers of workers in the telecommunications industry (and the wireless sector, in particular) have been laid off.⁴⁸ Firms in the telecommunications industry are extraordinarily interdependent, which means that problems with individual companies have a greater negative effect on other telecommunications companies relative to other industry sectors.⁴⁹ Further, as the *Public Notice* recognized, the applications that are the subject

(Continued from previous page)

Comments at 6-8. See also, e.g., Morgan Stanley Research Report: American Tower Company, at 2 (Morgan Stanley Equity Research: New York, NY: Aug. 9, 2002) (stating that tower operators "still face near term risks from carrier [capital expenditure] pullbacks, potential carrier bankruptcies and consolidation); Investment Cuts at Telecoms Create Cellphone Deadzones." *The Wall Street Journal Online*, http://online.wsj.com/article_print/0,,SB1039965809764336535,00.html (dated Sept. 3, 2002) <viewed Sept. 17, 2002> ("The top six [wireless] carriers are slashing capital expenses by more than \$3 billion, or about 12%, this year ... One result: between 70% and 90% fewer towers are being built now compared with just a couple of years ago - even though demand for phone service continues to grow rapidly.").

⁴⁴ See Alaska Native Wireless Comments at 4-6; Cingular Comments at 5-7; CTIA Comments at 2-3; Greater Boston Chamber of Commerce Comments at 1; Leap Comments at 3; Progress & Freedom Comments at 4; Salmon Comments at 1-11; Verizon Wireless Comments at 4-8.

⁴⁵ See, e.g., T-Mobile Comments at 4; PCS Partners Comments at 2; Crown Castle Reply at 3-4; Mesa letter, at 1.

⁴⁶ Letter from Rep. Cliff Stearns *et al.* to Chairman Powell, at 1 (Oct. 4, 2002).

⁴⁷ See, e.g., Sidak Study at 5, 22-24, 34-35 (describing "multiplicative effect" on economy of capital spending by wireless companies, and contending that relief for Eligible Auction 35 Winners "would produce an economic stimulus of up to \$51.5 billion."). See also BIAfn Study, at 8 (concurring with conclusions of Sidak Study, and providing independent analysis of state of wireless industry).

⁴⁸ In a recent report, CTIA reported that the number of employees in the wireless industry declined in the first half of 2002, which is the first ever decline in the number of wireless industry workers. See CTIA's Semi-Annual Wireless Industry Survey; Mid-year 2002 (CTIA: Washington, DC; rel. Oct. 30, 2002) (data from 1985 to mid-year 2002). See also, e.g., "Without A Net: In Bankruptcy, Getting Laid Off Hurts Even Worse," *The Wall Street Journal*, at A1 (Sept. 30, 2002) (stating that the telecommunications sector has accounted for six of the 10 largest bankruptcies so far this year); "Wireless Leads Telecom Industry Cuts," *Orange County [Calif.] Business Journal*, vol. 25, no. 35 at 3 (Sept. 2, 2002) (reporting that workforce cuts among four to wireless companies "accounted for 70% of layoffs" among top 20 telecommunications firms); "Technology's Troubles Linger," *Atlanta Business Chronicle*, at A3 (Oct. 11, 2002) (describing thousands of job losses for telecom workers in the State of Georgia during the past year); "U.S. Wireless Sector Trying to Reconnect With Success," *The Philadelphia Inquirer*, at D1 (Sept. 24, 2002) (describing Nortel's plans to cut 7,000 of its 42,000 jobs, and Cingular Wireless's plans to "slash 2,500 to 3,000 jobs"); "Telecommunications Analysts Expect Consolidations Within Industry," *Knight Ridder Tribune Business News* (July 29, 2002) ("More than 243,000 telecommunications jobs have been cut in the first six months of this year...").

⁴⁹ See, e.g., "The Insolvency Zone: the Bankrupting of the U.S. Telecom Sector," Scott Cleland, Precursor Group (May 20, 2002).

of this proceeding seek licenses for spectrum that continues to be the subject of the D.C. Circuit's mandate." We find it significant that this litigation was prosecuted by third parties and involved circumstances beyond the control of the Auction No. 35 winning bidders." Given the status of these proceedings, the Commission cannot make the NextWave/Urban Comm spectrum available to the Auction 35 winning bidders at this time.⁵² Our action today is justified by the concurrence of a unique situation where capital and spectrum were tied **up** for more than two years by litigation, and the worsening economic conditions in the wireless industry have had a substantial adverse effect on consumers. The combination of these factors leads to today's decision. Either by itself would not necessarily have supported this action.

11. We note that nearly all commenters agree that the public interest would be served by giving Eligible Auction 35 Winners the option of withdrawing their Pending Applications." Commenters contend that severe economic conditions combined with uncertainties about when this spectrum will become available for use by these bidders may be making it more difficult for wireless interests to weather the current economic storm.⁵⁴ Under these circumstances, we agree with those who suggest that relief for Eligible Auction 35 Winners may promote greater stability in the wireless sector and would allow firms electing to accept relief to focus their resources **on** providing communications services to consumers. Further, granting relief for bidders may give Eligible Auction 35 Winners and third party holders of spectrum additional certainty in which to make economic decisions about how to address

⁵⁰ See *Public Notice* at 1, n.2. We note that these applications seek licenses for spectrum that is the subject of extensive related litigation and pending regulatory proceedings.

⁵¹ *Bur see, supra*, note 38 (noting that bidders accepted litigation and other risks when participating in Auction No. 35).

⁵² In this regard, the current situation differs significantly from the context underlying earlier requests by winning bidders in Auction Nos. 5 and 10 because the Commission had issued licenses to those firms. See *Cand F Block Resrurcuring Order*, 12 FCC Rcd 16436. Here, by contrast, not only are telecommunications companies faced with difficult economic circumstances, but we are also prevented by judicial mandate from issuing the licenses they seek.

⁵³ One commenter unequivocally opposes any relief for the Auction No. 35 winners. See Friedman Comments at 1 (arguing that Auction No. 35 winners assumed the risks posed by pending litigation, and that the proposed relief would undercut the integrity of the Commission's spectrum auction program and deny the public the monetary benefits of the Auction No. 35 winners' bids). In addition, certain PCS licensees that acquired their licenses in Auction No. 5 urge not to grant relief to Auction No. 35 winners without extending similar relief to winning bidders in Auction No. 5. See Alpine Comments at 1-3; Eldorado Comments at 2; Eldorado Reply at 3-4; Mountain Solutions Reply at 1-5; McBride Reply at 1-5. We dispose *of* those arguments below. See *infra*, paragraph 19.

⁵⁴ The Progress & Freedom Foundation observes that more than 500,000 telecommunications workers have lost jobs since the start of 2001, which is a far greater job loss than in any other sector **of** the economy. Progress & Freedom Comments at 3. Nearly all other commenters agree that **the** telecommunicationsector is suffering in the current economic environment. See, e.g., 3DL Comments at 2-3; Alaska Native Wireless Comments at 5-7; Alpine Comments at 2; Black Crow Comments at 2-3; Cingular Comments at 5-8; Cook Inlet Comments at 3-4; CTIA Comments at 1-3, 9; DCC Comments at 2; Greater Boston Chamber Comments at 1; Lafayette Comments at 2-3; Nextel Comments at 8-9; PCS Partners Comments at 2-3; Salmon Comments at 9-13, 26, 28; T-Mobile Comments at 3-7; Triton Comments at 1, 3-4; Verizon Comments at 6-8; Crown Castle Reply at 2-4.

capacity constraints and meet consumer needs.⁵⁵ With the removal of their Auction No. 35 payment obligations and refund of deposits, Eligible Auction 35 Winners that elect relief will have financial resources to develop new services, deploy new technologies, and acquire additional spectrum.⁵⁶ Accordingly, relief will help further the Commission's statutory obligations of encouraging the development and deployment of new technologies and services and promoting economic opportunity and competition⁵⁷ by allowing Eligible Auction 35 Winners and their investors, who collectively provide service to approximately 75% of all wireless consumers,⁵⁸ to redeploy financial and other resources to expand networks and enhance existing services to meet consumers' needs.

A. Single Election For Withdrawal of All Applications

12. We will provide Eligible Auction 35 Winners with the option of requesting dismissal of all of their Pending Applications, or maintaining all of their Pending Applications on file. Under this "single election" approach, applicants will not be permitted to selectively withdraw Pending Applications for particular licenses and maintain them for others. We believe that this approach is warranted and best upholds the integrity of our auction program." A selective opt-out policy is not only complex," but could also necessitate the adoption of regulatory safeguards to prevent strategic anticompetitive behavior. In particular, the Commission has previously found that "cherry-picking" of licenses is contrary to the public interest because it undercuts the interdependency of licenses available in a subsequent reauction.⁶¹ A selective opt-out approach may have the additional disadvantage of leading to future defaults and additional requests for relief if market conditions do not improve in the near term.

13. By contrast, a single election involving all Pending Applications is easier to administer and may be implemented quickly, thereby expediting the realization of benefits for those that elect relief. Under our approach, Eligible Auction 35 Winners will be permitted to elect relief within a period not to exceed 45 days from the release of this Order. The majority of the commenters urge the Commission to

⁵⁵ See, e.g., Salmon Comments at 7-8 (describing how firms such as Salmon, have implemented service alternatives in the absence of a resolution of the *NextWave* litigation and licensing matters).

⁵⁶ See, e.g., Sidak study, at 3-4, 22-24; BIA fn Study at 7, 34; Cingular Comments at 7; T-Mobile Comments at 10; Verizon Comments at 7-X; Cook Inlet Comments at 3-4; Chamber Comments at 1; Qualcomm Comments at 1-2; Salmon Comments at 26, 28; Crown Castle Reply at 2-4; T-Mobile Reply at 6-7, 9; Verizon Wireless Reply at 3; Mesa letter at 2.

⁵¹ See 47 U.S.C. § 309(j)(3)(A) & (B)

⁵⁸ See Verizon Wireless Comments at 12-13, n.41; Verizon Wireless Reply at 8

⁵⁹ See Cook Inlet Comments at 6-7 (promoting a single election approach and observing that dismissal of applications under these circumstances "will bolster the credibility of [the Commission's] auctions" and demonstrate a commitment to fairness in the auction process).

⁶⁰ See, e.g., Cook Inlet Reply at 10; T-Mobile Reply at 3

⁶¹ See *C Block Restructuring Order*, 12 FCC Rcd at 16455, 16463, 16469 ¶¶ 38, 56, 67; *Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, Order on Reconsideration of the Second Report and Order, 13 FCC Rcd 8345, 8351-52 ¶ 18 (1998) ("C Block Restructuring Recon").

ensure that any relief is granted quickly so that the benefits come **sooner**.⁶² We are not persuaded by the arguments of those parties that advocate a selective dismissal approach and contend that the Commission should provide a lengthy period for bidders to make an election prior to receiving a **refund**.⁶³ For example, Alaska Native Wireless, LLC (“Alaska Native”) requests that the Commission “provide a commercially reasonable period of at least 180 days during which Auction No. 35 bidders may elect to be relieved of their associated rights and **obligations**.”⁶⁴ Alaska Native argues that designated entities will need such a period of time to undertake due diligence to determine how each license **fits** into its plans, to undertake any necessary restructuring of contractual arrangements for financing, management, and the like, and to obtain any necessary Commission approvals for necessary **restructuring**.⁶⁵ Similarly, Salmon proposes a two-step opt-out process that would allow applicants to delay making their final election until after the completion of the NextWave and Urban Comm proceedings, which might potentially extend uncertainties regarding these applications for many more **months**.⁶⁶ Such concerns, however, are predicated on a selective dismissal approach in which bidders would have to reevaluate the strategic and business decisions upon which they relied to participate in Auction No. 35.⁶⁷

14. We are mindful that our decision today may present a difficult choice for many applicants. However, this approach preserves opportunities for designated entities to participate in the provision of spectrum-based services by allowing them either to (1) continue to pursue their license applications, or (2) elect to withdraw their applications and redirect capital through other mechanisms (such as the secondary market transactions **or** future spectrum **auctions**).⁶⁸ Moreover, a single election approach reduces concerns that **an** Eligible Auction 35 Winner might elect to retain a **small** number of strategically-placed licenses **for** purposes of impairing the ability of other parties in a future auction from acquiring an efficiently-sized group of **licenses**.⁶⁹ Finally, we believe that a selective approach could lead to further litigation that could undercut our statutory mandates to promote the rapid deployment of new technologies and services and efficient and intensive use of **spectrum**.⁷⁰ In light of such risks, the relief

⁶² See 3DL Comments at 5; Cook Inlet Comments at 10; Progress & Freedom Comments at 5; Qualcomm Comments at 2; Triton Comments at 5; Verizon Wireless Comments at 28 (Regardless of approach used, the Commission “should act quickly to maximize the beneficial effect on the wireless industry and the domestic economy as a whole.”); Leap Comments at 5; T-Mobile Comments at 7 (urging that down payments “be expeditiously returned”); Crown Castle Reply at 1; McBride Reply at 7; Verizon Wireless Reply at 11.

⁶³ See, e.g., Alaska Native Comments at 10-13; Black Crow Comments at 5; Lafayette Comments at 4; Salmon Comments at 21-23.

⁶⁴ Alaska Native Comments at 10; Alaska Native Reply at 2, 5-6.

⁶⁵ *Id.*

⁶⁶ See Salmon Comments at 21-23.

⁶⁷ See Alaska Native Comments at 11-13.

⁶⁸ See 47 U.S.C. § 309(j)(3)(B) and (j)(4) (directing the Commission to promote opportunities for small businesses **and** other designated entities to participate in the provision of spectrum-based services **and** technologies).

⁶⁹ In this way, the Auction 35 winning bidder might seek to obtain an advantage in future auctions or create a situation in which it has to be fought out at a premium by other parties.

⁷⁰ See 47 U.S.C. § 309(j)(3)(A) & (D).

we adopt today is in the public interest

B. Refund of Deposits, Default Payments, and Eligibility to Acquire Spectrum

15. For Eligible Auction 35 Winners that elect relief, we will refund all monies on deposit held in connection with their Pending Applications, and will not assess any default payments or impose any restrictions on participating in future auctions. However, we will retain the monies on deposit with respect to Pending Applications (*i.e.*, three percent of the net winning bids) for any bidder that wants to maintain the *status quo*, and not seek relief.⁷¹ In our recent **Partial Refund Order**, we found that it would best serve the public interest to return the bulk of Eligible Auction 35 Winners' down payments, but to retain on deposit three percent of the net winning bids.⁷² Our decision was grounded in our recognition that retaining sufficient money to cover any future default payments would preserve the integrity of the auction and promote the public interest in furthering the deployment of service.⁷³ In the extraordinary circumstances that now face us, we believe that bidders should have an opportunity to obtain complete monetary relief with respect to Pending Applications that are dismissed pursuant to the relief described in this Order. We will waive those dismissal and default provisions for bidders that elect to take the benefits of this relief so as to further the public interest objectives that we believe our complete dismissal approach promotes.⁷⁴

16. We will not enforce the default rules against Auction 35 winning bidders that elect a complete dismissal of their Pending Applications. We note that commenters nearly unanimously advocate that the Commission refrain from imposing default payments on parties that choose to withdraw their Pending Applications.⁷⁵ However, the public interest in preserving the integrity of the auction requires us to decline the suggestion that the Commission return deposits regardless of whether winning

⁷¹ See **Partial Refund Order**, 17 FCC Rcd at 6291 ¶ 13 (refunding all but three percent of Auction No. 35 winners' net winning bids). For Eligible Auction 35 Winners that choose to keep their Pending Applications on file, we note that, as stated in the **Partial Refund Order**, "[s]hould the Commission prevail in the NextWave litigation, winning bidders in Auction No. 35 will be required to pay the full amount of their winning bids or be subjected to default payments under our rules." *Id.*

⁷² *Id.*

⁷³ See *id.*

⁷⁴ See 47 C.F.R. §§ 1.934(a)(2) (winning bidders may request dismissal of applications with prejudice, subject to default penalties); 1.2104(g) (default payments); 1.2109(b) (default penalties for bidders that withdraw after competitive bidding closes); Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660-4685 MHz, WT Docket No. 97-82, ET Docket No. 94-32. **Third Report and Order and Second Further Notice of Proposed Rule Making**, 13 FCC Rcd 374,433 ¶ 102 (1997). See also **Partial Refund Order**, 17 FCC Rcd at 6291 ¶ 13.

⁷⁵ See Alaska Native Comments at 2, 9, 15; Cingular Comments at 2, 4; Cook Inlet Comments at 1, 7-9; CTIA Comments at 4, 7-8; DCC Comments at 5-6; Greater Boston Chamber Comments at 1; Lafayette Comments at 4; Leap Comments at 1, 5; Progress & Freedom Comments at 3; Reiter/MacBride Comments at 1; Salmon Comments at 14-19; T-Mobile Comments at 2, 7-8; Triton Comments at 2 and n. 3; Verizon Comments at 16, 19, 22-23; 3DL Comments at 3. The only parties advocating imposition of monetary penalties are bidders that advocate similar relief to bidders in Auction No. 5 and claim that penalties similar to those imposed on Auction No. 5 bidders should be employed here. See Eldorado Comments at 5-7; Oncque Comments at 7. As discussed in greater detail below, those bidders' claims for relief are outside of the scope of this proceeding, and have no bearing on the issues at hand. See *infra*, paragraph 19.

bidders seek dismissal of their applications.⁷⁶

17. Our default payment rule is intended to serve two significant purposes. First, as we observed in the *Partial Refund Order*, retaining a deposit for Eligible Auction 35 Winners with Pending Applications provides insurance against any future defaults.⁷⁷ Second, such deposits demonstrate continued interest in being awarded the licenses.⁷⁸ Our decision in this instance to permit Eligible Auction 35 Winners to withdraw all of their Pending Applications eliminates the need to protect against future defaults with respect to these licenses and, for those making that election to continue to demonstrate interest. Significantly, we have no evidence that bidders were insincere in their attempts to acquire Auction No. 35 licenses. In this regard, we note that a number of Eligible Auction 35 Winners participated in a settlement process last year that demonstrated a strong willingness to pay for and make use of the licenses.⁷⁹ Accordingly, we do not find that our default rules would be undermined by providing relief here with respect to dismissed applications for NextWaveUrban Comm Spectrum. However, we cannot say the same with respect to winning bidders that do not elect dismissal. For those applicants, the continued pendency of their applications requires that we hold at least the amount on deposit to further the purposes of the default rule.⁸⁰

18. Under these circumstances, it would not be appropriate based on this election to bar or otherwise disqualify those that withdraw their Pending Applications from participating in future auctions of this spectrum.” We emphasize that our decision does not in any way change previously-established eligibility requirements for licenses for this spectrum.⁸² We believe that a **bar** would inappropriately

⁷⁶ See, e.g., Lafayette Comments at 1, 4:

⁷⁷ *Partial Refund Order*, 17 FCC Rcd at 6291 ¶ 13

⁷⁸ The Commission has long recognized that one of the principal purposes of the default rule “is to ensure that only serious and financially qualified bidders participate in the auction.” *Competitive Bidding Fourth MO&O*, FCC 94.264 at ¶ 46 (1994).

⁷⁹ See *NexrWave Settlement*, *supra* note 10.

⁸⁰ See *Partial Refund Order*, 17 FCC Rcd at 6289-91 ¶ 10, 12

⁸¹ See Nextel Comments at 8-12 (advocating a three-year prohibition on bidders from acquiring spectrum they successfully bid upon in Auction No. 35). Cf. Eldorado Comments at 3-4 (same bar should apply here as adopted in *C and F Block Restructuring Order* context for winning bidders in Auction No. 5). Most commenters oppose any restriction on future acquisitions. See, e.g., 3DL Comments at 3 (restriction is not appropriate because applicants are not in default); Alaska Native Wireless Comments at 17 (bar would prevent “experienced and otherwise qualified” small businesses from participating in the provision of spectrum-based services); Cingular Comments at 9 (penalty is not warranted because Auction No. 35 applicants are not in default and have complied with auction obligations); Cook Inlet Comments at 8 (bar would result in market inefficiencies and would undermine objective of auction process to award licenses to those who value them most highly); CTIA Comments at 5; DCC Comments at 3; Lafayette Comments at 1, 4-5; Leap Comments at 5; Reiter Comments at 1; Salmon PCS Comments at 14, 17-18 (bar would inappropriately prevent “experienced and otherwise qualified” small businesses from participating in the provision of spectrum-based services); T-Mobile Comments at 2, 7; Verizon Wireless Comments at 24-26 (bar would undermine rules and skew future auction results); Salmon Reply at 8-10 (three-year ban proposal fails to acknowledge fundamental differences between current circumstances and prior auction proceedings); T-Mobile Reply at 5-7 (“penalizing auction participants for good faith compliance with the Commission’s auction rules disrupts the reasonable expectations of auction participants and clouds the auction process with uncertainty.”).

⁸² See *C and F Block Restructuring Order*, 12 FCC Rcd 16474 ¶ 84.

impede access to spectrum associated with the dismissed applications by many participants in the industry, potentially undermining the goal of awarding licenses to parties that value them most highly. In addition, we find that present circumstances differ appreciably from other contexts in which the Commission has faced requests by winning bidders for relief from auction obligations. Certain winning bidders in Auction No. 5 have used this opportunity to argue that the Commission should extend relief to them **as well**.⁸³ Eldorado, for example, argues that there is no justification for treating Auction No. 35 winners more favorably than Auction No. 5 winners.⁸⁴ We note that the Commission did extend substantial relief to Auction No. 5 and No. 10 winners that had become C block licensees.⁸⁵ Here the Commission has been unable to grant licenses because of the D.C. Circuit's ruling **in** the prolonged *NextWave v. FCC* litigation.⁸⁶ Moreover, those Auction No. 5 and No. 10 winners that did not become licensees failed to do so because they defaulted on their post-auction payment obligations, an action under their own control. For this reason, we find that winning bidders in Auctions No. 5 and No. 10 are not similarly situated to the Auction No. 35 winners, as some commenters suggest, and deem their requests for relief to be outside the scope of this proceeding.”

19. We also address the pending petition for reconsideration filed by Eldorado.⁸⁸ Eldorado seeks reconsideration of our rejection in the *Partial Refund Order* of its opposition to the relief proposed in the Joint Request.⁸⁹ We concluded in the *Partial Refund Order* that Eldorado, not having participated in Auction No. 35, lacked standing to protest our prospective decision to provide relief to Auction No. 35 winners.⁹⁰ In its petition, Eldorado repeats its substantive objections to the partial refund using the same rationale for opposing relief that it articulates in its comments in this proceeding. Eldorado also disputes that it lacked standing and argues that we improperly rejected, based **on** its lack of standing, consideration of Eldorado's earlier objections. Eldorado further argues that we incorrectly characterized our action in the *Partial Refund Order* as a rule waiver. According to Eldorado, had we properly styled it a rulemaking, standing would not have been an issue. We disagree. The *Partial Refund Order* responded to a request that we refrain from applying our rules in a specific instance. The fact that a decision to waive one of our rules is necessarily preceded by consideration of the rule's effect does not transform the decision making process into a rule making proceeding. If it did, the Commission would be required to provide notice and seek comment every time it considered a request for rule waiver. We also continue to abide by our initial conclusion that Eldorado lacked standing to protest the possibility of

⁸³ See Alpine Comments at 1-3; Eldorado Comments 1-7; Onque Comments at 1-8; Mountain Solutions Reply at 1-5; Eldorado Reply at 3-4; McBride Reply at 2-5.

⁸⁴ Eldorado Comments at 4-6; Eldorado Reply at 1-4. See also *ex parte* letter from Rep. John Tanner (dated Oct. 17, 2002), enclosing an October 11, 2002 letter from Eldorado.

⁸⁵ See *C Block Restructuring Order*, 12 FCC Rcd 16436; *C Block Restructuring Reconsideration Order*, 13 FCC Rcd at 8351-52 ¶ 18.

⁸⁶ *NextWave Personal Communications Inc. v. FCC*, 254 F.3d 130 (D.C. Cir. 2001)

⁸⁷ Further, such requests for relief are untimely under the Commission's rules. See 47 C.F.R. § 1.429.

⁸⁸ Eldorado Petition,

⁸⁹ See *Partial Refund Order* at 2 n.5 and accompanying text. See also Eldorado Communications, LLC Opposition to Joint Request for Immediate Refund of Auction No. 35 Down Payments for NextWave Licenses (filed Jan. 17, 2002) (“Eldorado Opposition”).

⁹⁰ *id.*

relief for Auction No. 35 winners. As we stated in the *Partial Refund Order*, Eldorado failed to show a sufficient connection to the challenged action to establish that it would be injured by that action. In fact, Eldorado did not even allege that it might be injured; it simply used its opposition to argue that Auction No. 5 winners should be afforded similar relief.⁹¹ Accordingly, Eldorado's petition is denied.

IV. ORDERING CLAUSES

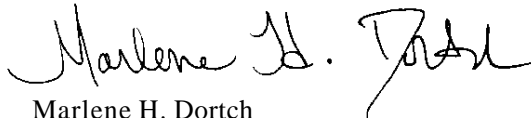
20. IT IS ORDERED that, pursuant to Sections 4(i), 5(b), 5(c)(1), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 155(b), 156(c)(1), 303(r), and 309(j), the Petition for Reconsideration of Eldorado Communications, LLC IS DENIED.

21. IT IS FURTHER ORDERED that each winning bidder in Auction No. 35 of spectrum associated with licenses that had previously been issued to NextWave or Urban Comm shall have an opportunity for a period of 45 days from the release of this Order and attached procedures to elect to obtain relief with respect to that spectrum.

22. IT IS FURTHER ORDERED that 47 C.F.R §§ 1.934, 1.2107, and 1.2109 of the Commission's rules are waived to the extent necessary to permit those bidders that elect to withdraw their pending long-form applications to do so without penalty and receive a refund of any remaining down payments made in Auction No. 35, provided such bidders comply strictly with the procedures established for implementation of this order, subject to approval by the Department of Justice, which has authority to settle litigation (and disputes posing the threat of litigation) involving the United States, as well as authority to review resolutions of other claims by and against the United States.

23. IT IS FURTHER ORDERED that AUTHORITY IS HEREBY DELEGATED to the Wireless Telecommunications Bureau and the Office of Managing Director to implement the policies and procedures for those winning bidders in Auction No. 35 for spectrum licenses that had previously been issued to NextWave or Urban Comm to elect to withdraw their long-form applications and obtain full refunds of all amounts on deposit on account of such bids.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

⁹¹ See Eldorado Opposition.

APPENDIX A • COMMENTS, REPLY COMMENTS, AND *EX PARTE* FILINGS IN WT
DOCKET NO. 02-276

COMMENTS

1. 3DL Wireless, L.L.C. ("3DL")	10/11/2002
2. Alaska Native Wireless, L.L.C. ("Alaska Native Wireless")	10/11/2002
3. Alpine PCS, Inc. ("Alpine")	10/11/2002
4. Black Crow Wireless, L.P. ("Black Crow")	10/11/2002
5. Cellular Telecommunications & Internet Association ("CTIA")	10/08/2002
6. Cingular Wireless L.L.C. ("Cingular")	10/11/2002
7. Cook Inlet Region, Inc. (" Cook Inlet")	10/11/2002
8. DCC PCS, Inc. ("DCC PCS")	10/10/2002
9. Eldorado Communications, L.L.C. ("Eldorado")	10/11/2002
10. Greater Boston Chamber of Commerce	10/11/2002
11. Joseph Friedman ("Friedman")	09/18/2002
12. Lafayette Communications Company, L.L.C. ("Lafayette")	10/11/2002
13. Leap Wireless International ("Leap")	10/11/2002
14. Nextel Communications, Inc. ("Nextel")	10/11/2002
15. OnQue Communications, Inc. ("OnQue")	10/11/2002
16. PCS Partners, L.P. ("PCS Partners")	10/11/2002
17. Qualcomm Incorporated ("Qualcomm")	10/11/2002
18. Salmon PCS, L.L.C. ("Salmon")	10/11/2002
19. Scott Reiter ("Reiter")	10/10/2002
20. T-Mobile USA, Inc. ("T-Mobile")	10/11/2002
21. The Progress & Freedom Foundation ("Progress & Freedom")	10/11/2002
22. Triton PCS Holdings, Inc. ("Triton")	10/11/2002
23. Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless")	10/21/2002

REPLY COMMENTS

1. AT&T Wireless Services, Inc. ("AT&T")	10/21/2002
2. Alaska Native Wireless	10/21/2002
3. Cingular	10/21/2002
4. Cook Inlet/V5 GSM V PCS, L.L.C. ("Cook Inlet")	10/21/2002
5. Crown Castle USA, Inc. ("Crown Castle")	10/21/2002
6. Eldorado Communications, L.L.C. ("Eldorado")	10/21/2002
7. Mountain Solutions, Inc. ("Mountain Solutions")	10/21/2002
8. Salmon	10/21/2002
9. Summit Wireless, L.L.C. ("Summit")	10/21/2002
10. T-Mobile	10/21/2002
11. Verizon Wireless	10/21/2002
12. Vincent D. McBride ("McBride")	10/21/2002

LETTERS

1. Mesa Communications Group ("Mesa")	10/23/2002
2. Peter C. Cramton, University of Maryland	08/15/2002

- | | | |
|----|---|------------|
| 3. | Donald Evans, Secretary, US Department of Commerce | 10/10/2002 |
| 4. | Rep. John Tanner | 10/11/2002 |
| 5. | Rep. Greg Ganske | 10/01/2002 |
| 6. | Rep. Rick Boucher | 10/10/2002 |
| | Rep. Robert Scott | |
| | Rep. Thomas Davis | |
| | Rep. Virgil Goode, Jr. | |
| | Rep. Bob Goodlatte | |
| | Rep. Randy Forbes | |
| | Rep. JoAnn Davis | |
| | Rep. Edward Schrock | |
| | Rep. Eric Cantor | |
| 7. | Rep. Rick Boucher | 10/04/2002 |
| | Rep. Tom Latham | |
| | Rep. Zoe Logren | |
| | Rep. Charles Pickering | |
| | Rep. George Radanovich | |
| | Rep. Roy Blunt | |
| | Rep. Bobby Rush | |
| | Rep. Thomas Sawyer | |
| | Rep. Robert Scott | |
| | Rep. John Shimkus | |
| | Rep. Michael Simpson | |
| | Rep. Clifford Stearns | |
| | Rep. Ted Strickland | |
| | Rep. Bart Stupak | |
| | Rep. Lee Terry | |
| | Rep. Mike Thompson | |
| | Rep. Edolphus Towns | |
| | Rep. Fred Upton | |
| | Rep. Greg Waldon | |
| | Rep. Ed Whitfield | |
| | Rep. Joe Barton | |
| | Rep. Charles Bass | |
| | Rep. Mary Bono | |
| | Rep. Ed Bryant | |
| | Rep. John Chris | |
| | Rep. Randy Cunningham | |
| | Rep. Thomas Davis | |
| | Rep. Robert Ehrlich, Jr. | |
| | Rep. Eliot Engel | |
| | Rep. Mark Foley | |
| | Rep. Barney Frank | |
| | Rep. Paul Gilmore | |
| | Rep. Gene Green | |
| | Rep. Jim Greenwood | |
| | Rep. Ralph Hall | |
| | Rep. Jeff Miller | |
| | Rep. Joe Wilson | |
| | Rep. Diane Watson | |

	Rep. Susan Davis	
8.	Sen. Ernest Hollings	10/28/02
	Sen. John Kerry	
	Sen. Sam Brownback	

EX PARTE FILINGS

1.	Alaska Native Wireless	10/08/2002
2.	Salmon PCS, LLC	09/18/2002
3.	Verizon Wireless	10/24/2002
4.	Verizon Wireless	10/24/2002
5.	Verizon Wireless	10/21/2002

APPENDIX B - PROCEDURES FOR IMPLEMENTING THE ORDER

In this Appendix, we provide the procedures that must be followed by Eligible Auction 35 Winners⁹² requesting dismissal of their Pending Applications⁹³, and by Auction No. 35 payors of record requesting a refund of their remaining Auction No. 35 deposits associated with Pending Applications of which dismissal is sought. In both cases, requests must be made within **45** days after release of this Order. In addition, we provide information regarding coordination with the Department of Justice.

Coordination with the Department of Justice

Eligible Auction 35 Winners that wish to elect relief pursuant to the Order must contact Patricia M. McCarthy, of the Commercial Litigation Branch at the Department of Justice (DOJ) at 202- 514-7300 for coordination and to obtain approval. Once Eligible Auction **35** Winners obtain such approval, that information will be coordinated with the Wireless Telecommunications Bureau ("Bureau") and the application dismissal and refund process will proceed.

Instructions for Filing a Request for the Dismissal of Pending Applications

In order to elect relief pursuant to the Order, Eligible Auction 35 Winners must, within **45** days after release of this Order, file as an amendment in the Commission's Universal Licensing System (**ULS**) to their Pending Applications, an exhibit requesting dismissal of such applications.

Each applicant requesting dismissal must upload such request as an exhibit to its Form 601. The exhibit should be identified as the "Dismissal Request." Applicants should use the Attachment screen provided within the electronic filing software to submit their exhibits as uploaded files and should select the appropriate attachment type. The electronic filing software will accept Word, Word Perfect, Adobe Portable Document Format (PDF), and **ASCII** text files only. See http://wireless.fcc.gov/uIs/support/heIp/heIp_attach.htm for a full list of acceptable file formats. **Do not add password protection to attached files.**

We suggest the following language for the Dismissal Request:

Pursuant **to** the Commission's order entitled Disposition of Down Payment and Pending Applications By Certain Winning Bidders in Auction No. 35, Requests for Refunds of Down Payments Made In Auction No, 35, **WT** Docket 02-276, *Order and Order on Reconsideration*, FCC 02-311, (rel. Nov. **14**, 2002) ("**Final Refund Order**"), [name of applicant] hereby requests dismissal with prejudice of its Pending Application. as the term "Pending Application" is defined in the *Final Refund Order*, with respect to all markets listed for [name of applicant] in Attachment A to the *Final Refund Order*.

⁹² An "Eligible Auction 35 Winner" is a winning bidder in Auction No. **35** with a pending application(s) for license(s) for spectrum that was previously licensed to NextWave Personal Communications Inc., NextWave Power Partners Inc. (collectively "NextWave"), or Urban Comm-North Carolina, Inc. ("Urban Comm"), and that is now subject to the NextWave litigation and Urban Comm proceedings ("NextWaveNrbnComm Spectrum").

⁹³ A "Pending Application" is a pending Auction No. **35** long-form application for one or more licenses for NextWaveNrbn Comm Spectrum.

To file an Amendment to its pending application, an Eligible Auction 35 Winner must access ULS Online Filing through the Internet at <http://wireless.fcc.gov/uls> and follow the steps outlined below:

1. Select the Online Filing button from the **ULS** homepage.
2. At the Online Filing login screen, enter the applicant's FCC Registration Number (FRN) and password and click Continue. Alternatively, the applicant may enter its TIN/SGIN and password and click Continue.
3. Select New Filing and click Continue.
4. Select Application Purpose "Amendment" and click Continue.
5. Select the applicable File Number from the pull-down **menu** and click Continue.
6. The application will appear. At the bottom of the page, provide the Signature and Title of a person authorized to sign the application and click Continue.
7. Click on the Attachment button at the bottom of the screen to upload the **Dismissal** Request exhibit.
8. An Attachment window will appear. Provide the following information:
 - a) Select Attachment Type "**O**–Other."
 - b) Type the File Name of the attachment.
 - c) Type "Dismissal Request" for the File Description and click Upload.
 - d) After the attachment is uploaded successfully, click Return and then click Close.
9. Click on the Continue button at the bottom of the page.
10. **At** this point, the applicant may Submit the application by clicking the Submit button.
11. A Confirmation page will appear indicating that the application was submitted successfully.

For further information regarding the Dismissal Request contact: Amal Abdallah, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, 202-418-7307.

For technical support contact: **ULS** Technical Support Hotline, open 8: a.m. to 6:00 p.m., Monday through Friday, 202-414-1250.

Instructions for Filing a Request for a Refund of Remaining Auction No. 35 Deposits

Once the Bureau announces its acceptance of a Dismissal Request following DOJ approval, the Commission will process refund requests from Auction No. 35 payors of record. Refund requests **may be** submitted either at the same time as or after the Eligible Auction 35 Winner has requested dismissal of its corresponding application, but, in any case, refund requests must be submitted within **45** days after release of this Order.

In order to receive a refund, each payor of record must comply with the following procedures:

- For each payor **of** record, submit *an* Automated Clearing House Vendor/Miscellaneous Payment Enrollment Form ("ACH form") (see sample attached to this **Appendix**).⁹⁴ Additional copies of this

⁹⁴ Refunds will **be** processed via ACH credits. An ACH is an instrument for moving money electronically from one participating financial institution **to** another. ACH **is** a domestic funds transfer system providing an electronic parallel to the Federal Reserve check clearing system. ACH **is** governed **by** the Rules of the National Automated (continued...)

form may be accessed at <http://www.fms.treas.gov/pdf/3881.pdf>. Please leave blank the “Agency Information” section. Only complete the “Payee/Company” and “Financial Institution” sections of the form.

- Submit a letter (along with the ACH form) signed by the payor of record, requesting a refund and identifying the applicant and file number of the associated Pending Application. The Commission will calculate the amount of the applicable refund.

The **ACH** form and the letter from the payor of record must be either faxed or mailed to the Commission. The fax number is: (202) 418-2843. The mailing address is: Federal Communications Commission, Office of the Managing Director, Attention: Auctions Accounting Group, Room 1-C863, 445 12th St. SW Washington, D.C. 20554. **Any** questions concerning the completion of this form should be directed to Gail Glasser at (202) 418-0578 or Tim Dates at (202) 418-0496.

(Continued from previous page) _____
Clearing House Association.

ACH VENDOR/MISCELLANEOUS PAYMENT
ENROLLMENT FORM

OMB No 1510-0058

This form is used for Automated Clearing House (ACH) payments with an addendum record that contains payment-related information processed through the Vendor Express Program. Recipients of these payments should bring this information to the attention of their financial institution when presenting this form for completion.

PRIVACY ACT STATEMENT

The following information is provided to comply with the Privacy Act of 1974 (P.L. 93-579). All information collected on this form is required under the provisions of 31 U.S.C. 3322 and 31 CFR 210. This information will be used by the Treasury Department to transmit payment data, by electronic means to vendor's financial institution. Failure to provide the requested information may delay or prevent the receipt of payments through the Automated Clearing House Payment System.

AGENCY INFORMATION

FEDERAL PROGRAM AGENCY

1		
AGENCY IDENTIFIER	AGENCY LOCATION CODE (ALC)	ACH FORMAT <input type="checkbox"/> CCD+ <input type="checkbox"/> CTX <input type="checkbox"/> CTP
ADDRESS		
CONTACT PERSON NAME		TELEPHONE NUMBER ()
NAME		SSN NO OR TAXPAYER ID NO
CONTACT PERSON NAME		TELEPHONE NUMBER ()

FINANCIAL INSTITUTION INFORMATION

NAME	
ADDRESS	
ACH COORDINATOR NAME	TELEPHONE NUMBER ()
NINE-DIGIT ROUTING TRANSIT NUMBER	
DEPOSITOR ACCOUNT TITLE	
DEPOSITOR ACCOUNT NUMBER	LOCKBOX NUMBER
TYPE OF ACCOUNT: <input type="checkbox"/> CHECKING <input type="checkbox"/> SAVINGS <input type="checkbox"/> LOCKBOX	
SIGNATURE AND TITLE OF AUTHORIZED OFFICIAL (Could be the same as ACH Coordinator)	TELEPHONE NUMBER ()

Instructions for Completing SF 3881 Form

1. Agency Information Section - Federal agency prints or types the name and address of the Federal program agency originating the vendor/miscellaneous payment, agency identifier, agency location code, contact person name and telephone number of the agency. Also, the appropriate box for ACH format is checked.
2. Payee/Company Information Section - Payee prints or types the name of the payee/company and address that will receive ACH vendor/miscellaneous payments, social security or taxpayer ID number, and contact person name and telephone number of the payee/company. Payee also verifies depositor account number, account title, and type of account entered by your financial institution in the Financial Institution Information Section.
3. Financial Institution Information Section - Financial institution prints or types the name and address of the payee/company's financial institution who will receive the ACH payment, ACH coordinator name and telephone number, nine-digit routing transit number, depositor (payee/company) account title and account number. Also, the box for type of account is checked, and the signature, title, and telephone number of the appropriate financial institution official are included.

Burden Estimate Statement

The estimated average burden associated with this collection of information is 15 minutes per respondent or recordkeeper, depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Financial Management Service, Facilities Management Division, Property and Supply Branch, Room B-101, 3700 East West Highway, Hyattsville, MD 20782 and the Office of Management and Budget, Paperwork Reduction Project (1510-0056), Washington, DC 20503.

Applicant Name	File Number	Market	Channel Block	Market Description
3DL Wireless, LLC	0000365151	BTA047	C3	Bloomington-Bedford, IN
3DL Wireless, LLC	0000365151	BTA135	C3	Evansville, IN
3DL Wireless, LLC	0000365151	BTA318	C4	New Haven-Waterbury-Meriden, CT
3G PCS, LLC	0000364147	BTA062	C3	Burlington, NC
3G PCS, LLC	0000364147	BTA261	C3	Longview, WA
Alaska Native Wireless, L.L.C.	0000363827	BTA036	C3	Bellingham, WA
Alaska Native Wireless, L.L.C.	0000363827	BTA074	C3	Charlotte-Gastonia, NC
Alaska Native Wireless, L.L.C.	0000364320	BTA081	C4	Cincinnati, OH
Alaska Native Wireless, L.L.C.	0000364320	BTA084	C3	Cleveland-Akron, OH
Alaska Native Wireless, L.L.C.	0000364320	BTA095	C3	Columbus, OH
Alaska Native Wireless, L.L.C.	0000364320	BTA106	C5	Dayton-Springfield, OH
Alaska Native Wireless, L.L.C.	0000364320	BTA110	C4	Denver, CO
Alaska Native Wireless, L.L.C.	0000364320	BTA159	C4	Gainesville, FL
Alaska Native Wireless, L.L.C.	0000364320	BTA174	C3	Greensboro-Winston-Salem-High Point, NC
Alaska Native Wireless, L.L.C.	0000364320	BTA212	C3	Jacksonville, FL
Alaska Native Wireless, L.L.C.	0000363827	BTA220	C4	Joplin, MO-Miami, OK
Alaska Native Wireless, L.L.C.	0000364320	BTA239	C3	Lakeland-Winter Haven, FL
Alaska Native Wireless, L.L.C.	0000364320	BTA261	C4	Longview, WA
Alaska Native Wireless, L.L.C.	0000363827	BTA262	C3	Los Angeles, CA
Alaska Native Wireless, L.L.C.	0000364320	BTA289	C4	Melbourne-Titusville, FL
Alaska Native Wireless, L.L.C.	0000363827	BTA298	C3	Minneapolis-St. Paul, MN
Alaska Native Wireless, L.L.C.	0000364320	BTA318	C3	New Haven-Waterbury-Meriden, CT
Alaska Native Wireless, L.L.C.	0000363827	BTA319	C4	New London-Norwich, CT
Alaska Native Wireless, L.L.C.	0000363827	BTA321	C3	New York, NY
Alaska Native Wireless, L.L.C.	0000363827	BTA331	C3	Olympia-Centralia, WA
Alaska Native Wireless, L.L.C.	0000364320	BTA336	C4	Orlando, FL
Alaska Native Wireless, L.L.C.	0000364320	BTA357	C3	Portland-Brunswick, ME
Alaska Native Wireless, L.L.C.	0000363827	BTA358	C4	Portland, OR
Alaska Native Wireless, L.L.C.	0000364320	BTA368	C3	Raleigh-Durham, NC
Alaska Native Wireless, L.L.C.	0000364320	BTA408	C3	Sarasota-Bradenton, FL
Alaska Native Wireless, L.L.C.	0000364320	BTA408	C4	Sarasota-Bradenton, FL
Alaska Native Wireless, L.L.C.	0000364320	BTA440	C3	Tampa-St. Petersburg-Clearwater, FL

Applicant Name	File Number	Market	Channel Block	Market Description
Alaska Native Wireless, L.L.C.	0000363827	BTA448	F	Tulsa, OK
Alaska Native Wireless, L.L.C.	0000364320	BTA480	C4	Worcester-Fitchburg-Leominster, MA
Black Crow Wireless, L.P.	0000365273	BTA047	C4	Bloomington-Bedford, IN
Black Crow Wireless, L.P.	0000365273	BTA159	C5	Gainesville, FL
Black Crow Wireless, L.P.	0000365273	BTA212	C5	Jacksonville, FL
Black Crow Wireless, L.P.	0000365273	BTA220	C3	Joplin, MO-Miami, OK
Black Crow Wireless, L.P.	0000365273	BTA226	C4	Kansas City, MO
Black Crow Wireless, L.P.	0000365273	BTA226	C5	Kansas City, MO
Black Crow Wireless, L.P.	0000365273	BTA235	C4	Lafayette, IN
Black Crow Wireless, L.P.	0000365273	BTA326	F	Ocala, FL
Black Crow Wireless, L.P.	0000365273	BTA329	C3	Oklahoma City, OK
Black Crow Wireless, L.P.	0000365273	BTA329	C4	Oklahoma City, OK
Black Crow Wireless, L.P.	0000365273	BTA428	C4	Springfield, MO
Black Crow Wireless, L.P.	0000365273	BTA428	C5	Springfield, MO
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA007	C5	Albany-Schenectady, NY
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA010	C5	Allentown-Bethlehem-Easton, PA
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA020	F	Asheville-Hendersonville, NC
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA025	F	Atlantic City, NJ
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA027	C5	Austin, TX
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA036	C5	Bellingham, WA
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA047	C5	Bloomington-Bedford, IN
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA051	C4	Boston, MA
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA051	C5	Boston, MA
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA056	C5	Brownsville-Harlingen, TX
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA059	C5	Bryan-College Station, TX
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA074	C5	Charlotte-Gastonia, NC
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA078	F	Chicago, IL
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA084	C4	Cleveland-Akron, OH
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA093	C5	Columbus, IN
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA095	C5	Columbus, OH
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA107	F	Daytona Beach, FL
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA110	C5	Denver, CO

Applicant Name	File Number	Market	Channel Block	Market Description
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA116	F	Dover, DE
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA128	C5	El Paso, TX
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA135	C5	Evansville, IN
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA141	C5	Fayetteville-Lumberton, NC
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA147	F	Florence, SC
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA156	F	Fredericksburg, VA
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA165	C5	Goldsboro-Kinston, NC
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA174	C5	Greensboro-Winston-Salem-High Point, NC
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA176	C5	Greenville-Washington, NC
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA179	C5	Hagerstown, MD-Chambersburg, PA-Martinsburg, WV
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA181	F	Harrisburg, PA
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA189	C5	Hickory-Lenoir-Morganton, NC
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA196	C4	Houston, TX
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA204	C5	Indianapolis, IN
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA214	C5	Jacksonville, NC
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA235	C5	Lafayette, IN
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA239	C5	Lakeland-Winter Haven, FL
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA240	F	Lancaster, PA
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA244	C5	Las Cruces, NM
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA245	F	Las Vegas, NV
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA252	C5	Lexington, KY
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA261	C5	Longview, WA
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA262	C4	Los Angeles, CA
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA263	C5	Louisville, KY
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA268	C5	McAllen, TX
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA274	C5	Manchester-Nashua-Concord, NH
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA289	C5	Melbourne-Titusville, FL
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA298	C5	Minneapolis-St. Paul, MN
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA312	F	Myrtle Beach, SC
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA316	C5	New Bern, NC
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA318	C5	New Haven-Waterbury-Meriden, CT

Applicant Name	File Number	Market	Channel Block	Market Description
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA319	C5	New London-Norwich, CT
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA321	C4	New York, NY
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA321	C5	New York, NY
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA329	C5	Oklahoma City, OK
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA331	C5	Olympia-Centralia, WA
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA346	F	Philadelphia, PA-Wilmington, DE-Trenton, NJ
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA350	C4	Pittsburgh, PA
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA357	C5	Portland-Brunswick, ME
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA358	C5	Portland, OR
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA361	C5	Poughkeepsie-Kingston, NY
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA364	C5	Providence-Pawtucket, RI-New Bedford-Fall Riv.. MA
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA368	C5	Raleigh-Durham, NC
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA370	F	Reading, PA
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA376	C5	Roanoke, VA
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA377	C5	Roanoke Rapids, NC
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA382	C5	Rocky Mount-Wilson, NC
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA389	F	Sacramento, CA
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA394	F	St. Louis, MO
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA399	F	Salt Lake City-Ogden, UT
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA402	C5	San Diego, CA
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA404	F	San Francisco-Oakland-San Jose, CA
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA408	C5	Sarasota-Bradenton, FL
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA412	C5	Scranton-Wilkes Barre-Hazleton, PA
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA413	C4	Seattle-Tacoma, WA
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA413	C5	Seattle-Tacoma, WA
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA441	C5	Temple-Killeen, TX
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA452	F	Tyler, TX
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA461	C4	Washington, DC
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA478	C5	Wilmington, NC
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA480	C5	Worcester-Fitchburg-Leominster, MA
Cellco Partnership d/b/a Verizon Wireless	0000364146	BTA483	F	York-Hanover, PA

Applicant Name	File Number	Market	Channel Block	Market Description
Cook Inlet/VS GSM V PCS, LLC	0000365280	BTA020	C4	Asheville-Hendersonville, NC
Cook Inlet/VS GSM V PCS, LLC	0000365280	BTA027	C4	Austin, TX
Cook Inlet/VS GSM V PCS, LLC	0000365280	BTA029	C3	Baltimore, MD
Cook Inlet/VS GSM V PCS, LLC	0000365280	BTA036	C4	Bellingham, WA
Cook Inlet/VS GSM V PCS, LLC	0000365280	BTA062	C4	Burlington, NC
Cook Inlet/VS GSM V PCS, LLC	0000365280	BTA074	C4	Charlotte-Gastonia, NC
Cook Inlet/VS GSM V PCS, LLC	0000365280	BTA141	C4	Fayetteville-Lumberton, NC
Cook Inlet/VS GSM V PCS, LLC	0000365280	BTA174	C4	Greensboro-Winston-Salem-High Point, NC
Cook Inlet/VS GSM V PCS, LLC	0000365280	BTA176	C4	Greenville-Washington, NC
Cook Inlet/VS GSM V PCS, LLC	0000365280	BTA189	C4	Hickory-Lenoir-Morganton, NC
Cook Inlet/VS GSM V PCS, LLC	0000365280	BTA204	C3	Indianapolis, IN
Cook Inlet/VS GSM V PCS, LLC	0000365280	BTA214	C4	Jacksonville, NC
Cook Inlet/VS GSM V PCS, LLC	0000365280	BTA316	C4	New Bern, NC
Cook Inlet/VS GSM V PCS, LLC	0000365280	BTA331	C4	Olympia-Centralia, WA
Cook Inlet/VS GSM V PCS, LLC	0000365280	BTA368	C4	Raleigh-Durham, NC
Cook Inlet/VS GSM V PCS, LLC	0000365280	BTA377	C4	Roanoke Rapids, NC
Cook Inlet/VS GSM V PCS, LLC	0000365280	BTA382	C4	Rocky Mount-Wilson, NC
Cook Inlet/VS GSM V PCS, LLC	0000365280	BTA402	C4	San Diego, CA
Cook Inlet/VS GSM V PCS, LLC	0000365280	BTA413	C3	Seattle-Tacoma, WA
Cook Inlet/VS GSM V PCS, LLC	0000365280	BTA441	C3	Temple-Killeen, TX
Cook Inlet/VS GSM V PCS, LLC	0000365280	BTA478	C4	Wilmington, NC
DCC PCS, Inc.	0000365171	BTA010	C3	Allentown-Bethlehem-Easton, PA
DCC PCS, Inc.	0000365171	BTA029	C4	Baltimore, MD
DCC PCS, Inc.	0000365171	BTA056	C3	Brownsville-Harlingen, TX
DCC PCS, Inc.	0000365171	BTA059	C4	Bryan-College Station, TX
DCC PCS, Inc.	0000365171	BTA226	C3	Kansas City, MO
DCC PCS, Inc.	0000365171	BTA268	C3	McAllen, TX
DCC PCS, Inc.	0000365171	BTA350	C3	Pittsburgh, PA
DCC PCS, Inc.	0000365171	BTA401	C3	San Antonio, TX
DCC PCS, Inc.	0000365171	BTA402	C3	San Diego, CA
DCC PCS, Inc.	10000365171	BTA441	C4	Temple-Killeen, TX
DCC PCS, Inc.	10000365171	BTA461	C3	Washington, DC

Applicant Name	File Number	Market	Channel Block	Market Description
Lafayette Communications Company L.L.C.	0000365449	BTA020	C3	Asheville-Hendersonville, NC
Lafayette Communications Company L.L.C.	49	41	C3	Asheville-Hendersonville, NC
Lafayette Communications Company L.L.C.	49	65	C4	Asheville-Hendersonville, NC
Lafayette Communications Company L.L.C.	0000365449	BTA176	C3	Greenville-Washington, NC
Lafayette Communications Company L.L.C.	0000365449	BTA189	C3	Hickory-Lenoir-Morganton, NC
Lafayette Communications Company L.L.C.	0000365449	BTA214	C3	Jacksonville, NC
Lafayette Communications Company L.L.C.	0000365449	BTA316	c3	New Bern, NC
Lafayette Communications Company L.L.C.	0000365449	BTA324	c5	Norfolk-Virginia Beach-Newport News-Hampton, VA
Lafayette Communications Company L.L.C.	0000365449	BTA374	C3	Richmond-Petersburg, VA
Lafayette Communications Company L.L.C.	0000365449	BTA376	c3	Roanoke, VA
Lafayette Communications Company L.L.C.	0000365449	BTA377	C3	Roanoke Rapids, NC
Lafayette Communications Company L.L.C.	0000365449	BTA382	C3	Rocky Mount-Wilson, NC
Lafayette Communications Company L.L.C.	0000365449	BTA478	C3	Wilmington, NC
LastWave Partners, LP	0000362139	BTA361	C4	Poughkeepsie-Kingston, NY
Leap Wireless International, Inc.	0000365276	BTA007	C3	Albany-Schenectady, NY
Leap Wireless International, Inc.	0000365276	BTA020	C5	Asheville-Hendersonville, NC
Leap Wireless International, Inc.	0000365276	BTA027	C3	Austin, TX
Leap Wireless International, Inc.	0000365276	BTA056	C4	Brownsville-Harlingen, TX
Leap Wireless International, Inc.	0000365276	BTA059	C3	Bryan-College Station, TX
Leap Wireless International, Inc.	0000365276	BTA093	C4	Columbus, IN
Leap Wireless International, Inc.	0000365276	BTA095	C4	Columbus, OH
Leap Wireless International, Inc.	0000365276	BTA128	C3	El Paso, TX
Leap Wireless International, Inc.	0000365276	BTA196	C5	Houston, TX
Leap Wireless International, Inc.	0000365276	BTA204	C4	Indianapolis, IN
Leap Wireless International, Inc.	0000365276	BTA212	C4	Jacksonville, FL
Leap Wireless International, Inc.	0000365276	BTA244	C3	Las Cruces, NM
Leap Wireless International, Inc.	0000365276	BTA252	C4	Lexington, KY
Leap Wireless International, Inc.	0000365276	BTA263	C4	Louisville, KY
Leap Wireless International, Inc.	0000365276	BTA268	C4	McAllen, TX
Leap Wireless International, Inc.	0000365276	BTA289	C3	Melbourne-Titusville, FL
Leap Wireless International, Inc.	0000365276	BTA319	C3	New London-Notwich, CT
Leap Wireless International, Inc.	0000365276	BTA361	C3	Poughkeepsie-Kingston, NY

Applicant Name	File Number	Market	Channel Block	Market Description
Leap Wireless International, Inc.	0000365276	BTA364	C3	Providence-Pawtucket, RI-New Bedford-Fall Riv., MA
Leap Wireless International, Inc.	0000365276	BTA401	C4	San Antonio, TX
Leap Wireless International, Inc.	0000365276	BTA412	C4	Scranton-Wilkes Barre-Hazleton, PA
Leap Wireless International, Inc.	0000365276	BTA480	C3	Worcester-Fitchburg-Leominster, MA
MCBRIDE, VINCENT D	0000360598	BTA135	C4	Evansville, IN
MCG PCS II, Inc.	0000365038	BTA010	C4	Allentown-Bethlehem-Easton, PA
MCG PCS II, Inc.	0000365038	BTA179	C3	Hagerstown, MD-Chambersburg, PA-Martinsburg, WV
Mint GSM Services Inc.	0000365182	BTA062	C5	Burlington, NC
Mint GSM Services Inc.	0000365182	BTA165	C3	Goldsboro-Kinston, NC
NORTHCOAST COMMUNICATIONS, L.L.C.	0000365464	BTA007	C4	Albany-Schenectady, NY
NORTHCOAST COMMUNICATIONS, L.L.C.	0000365464	BTA081	C5	Cincinnati, OH
NORTHCOAST COMMUNICATIONS, L.L.C.	0000365464	BTA106	C4	Dayton-Springfield, OH
NORTHCOAST COMMUNICATIONS, L.L.C.	0000365464	BTA274	C4	Manchester-Nashua-Concord, NH
Poplar PCS-Central, LLC	0000364979	BTA220	C5	Joplin, MO-Miami, OK
Reiter, Scott D	0000359119	BTA093	C3	Columbus, IN
Salmon PCS LLC	0000365189	BTA024	F	Atlanta, GA
Salmon PCS LLC	0000365189	BTA029	C5	Baltimore, MD
Salmon PCS LLC	0000365189	BTA051	C3	Boston, MA
Salmon PCS LLC	0000365189	BTA075	F	Charlottesville, VA
Salmon PCS LLC	0000365189	BTA101	F	Dallas-Fort Worth, TX
Salmon PCS LLC	0000365189	BTA110	C3	Denver, CO
Salmon PCS LLC	0000365189	BTA128	C4	El Paso, TX
Salmon PCS LLC	0000365189	BTA179	C4	Hagerstown, MD-Chambersburg, PA-Martinsburg, WV
Salmon PCS LLC	0000365189	BTA183	F	Harrisonburg, VA
Salmon PCS LLC	0000365189	BTA196	C3	Houston, TX
Salmon PCS LLC	0000365189	BTA225	F	Kankakee, IL
Salmon PCS LLC	0000365189	BTA239	C4	Lakeland-Winter Haven, FL
Salmon PCS LLC	0000365189	BTA244	C4	Las Cruces, NM
Salmon PCS LLC	0000365189	BTA262	C5	Los Angeles, CA

Applicant Name	File Number	Market	Channel Block	Market Description
Salmon PCS LLC	0000365189	BTA263	C3	Louisville, KY
Salmon PCS LLC	0000365189	BTA274	C3	Manchester-Nashua-Concord, NH
Salmon PCS LLC	0000365189	BTA284	F	Martinsville, VA
Salmon PCS LLC	0000365189	BTA298	C4	Minneapolis-St. Paul, MN
Salmon PCS LLC	0000365189	BTA324	C4	Norfolk-Virginia Beach-Newport News-Hampton, VA
Salmon PCS LLC	0000365189	BTA336	C5	Orlando, FL
Salmon PCS LLC	0000365189	BTA350	C5	Pittsburgh, PA
Salmon PCS LLC	0000365189	BTA357	C4	Portland-Brunswick, ME
Salmon PCS LLC	0000365189	BTA358	C3	Portland, OR
Salmon PCS LLC	0000365189	BTA364	C4	Providence-Pawtucket, RI-New Bedford-Fall Riv., MA
Salmon PCS LLC	0000365189	BTA365	F	Provo-Orem, UT
Salmon PCS LLC	0000365189	BTA374	C4	Richmond-Petersburg, VA
Salmon PCS LLC	0000365189	BTA374	C5	Richmond-Petersburg, VA
Salmon PCS LLC	0000365189	BTA376	C4	Roanoke, VA
Salmon PCS LLC	0000365189	BTA398	F	Salisbury, MD
Salmon PCS LLC	0000365189	BTA412	C3	Scranton-Wilkes Barre-Hazleton, PA
Salmon PCS LLC	0000365189	BTA428	C3	Springfield, MO
Salmon PCS LLC	0000365189	BTA430	F	Staunton-Waynesboro, VA
Salmon PCS LLC	0000365189	BTA440	C5	Tampa-St. Petersburg-Clearwater, FL
Salmon PCS LLC	0000365189	BTA461	C5	Washington, DC
SLO Cellular, Inc.	0000363734	BTA235	C3	Lafayette, IN
SVC BidCo, L.P.	0000364238	BTA081	C3	Cincinnati, OH
SVC BidCo, L.P.	0000364238	BTA106	C3	Dayton-Springfield, OH
SVC BidCo, L.P.	0000364238	BTA324	C3	Norfolk-Virginia Beach-Newport News-Hampton, VA
SVC BidCo, L.P.	0000364238	BTA336	C3	Orlando, FL
SVC BidCo, L.P.	0000364238	BTA440	C4	Tampa-St. Petersburg-Clearwater, FL
Theta Communications, LLC	0000365210	BTA159	C3	Gainesville, FL
Unbound PCS, LLC	0000361223	BTA252	C3	Lexington, KY
VoiceStream PCS BTA I License Corporation	0000365311	BTA072	F	Charleston, SC
VoiceStream PCS BTA I License Corporation	0000365311	BTA084	C5	Cleveland-Akron, OH
VoiceStream PCS BTA I License Corporation	0000365311	BTA091	F	Columbia, SC

Applicant Name	File Number	Market	Channel Block	Market Description
VoiceStream PCS BTA I License Corporation	0000365311	BTA099	F	Corpus Christi, TX
VoiceStream PCS BTA I License Corporation	0000365311	BTA177	F	Greenville-Spartanburg, SC
VoiceStream PCS BTA I License Corporation	0000365311	BTA216	F	Janesville-Beloit, WI
VoiceStream PCS BTA I License Corporation	0000365311	BTA297	F	Milwaukee, WI
VoiceStream PCS BTA I License Corporation	0000365311	BTA335	F	Orangeburg, SC
VoiceStream PCS BTA I License Corporation	0000365311	BTA374	F	Richmond-Petersburg, VA
VoiceStream PCS BTA I License Corporation	0000365311	BTA376	F	Roanoke, VA
VoiceStream PCS BTA I License Corporation	0000365311	BTA401	C5	San Antonio, TX
VoiceStream PCS BTA I License Corporation	0000365311	BTA436	F	Sumter, SC

STATEMENT OF CHAIRMAN MICHAEL K. POWELL

Re: *Disposition of Down Payments and Pending Applications By Certain Winning Bidders in Auction Nu. 35*

The Auction 35 road endured by all the parties and the public has been long and difficult. While bidders were forewarned of the risks attending the Auction, **and** the Commission has pursued settlement and afforded bidders partial, interim relief, barriers to licensing remain. As the months have passed and the economic difficulties worsened, it has become increasingly clear that allowing the eligible Auction 35 winners to exit the auction **is** the right course. I recently outlined six components **of** a successful telecommunications recovery. Reduction of debt was among its highest priorities. Although the Commission cannot cure the capital crunch, it can remove the cloud **of** uncertainty that has followed the Auction 35 winners. Approximately three weeks ago, the record in this docket closed and today we take that step. The staff has done an extraordinary job to bring this issue so quickly to closure; their sense of urgency was commensurate with the important public policy and economic issues at stake.

SEPARATE STATEMENT OF COMMISSIONER KATHLEEN Q. ABERNATHY

Re: Disposition of Down Payments and Pending Applications By Certain Winning Bidders in Auction No. 35; Requests for Refunds of Down Payments Made in Auction No. 35. WT Docket No. 02-276

I enthusiastically support today's Order. I have long believed that the delays occasioned by extensive litigation, when combined with significant changes in the marketplace over the last several years, lead us to today's result. In light of the ongoing uncertainty regarding our ability to award these licenses and current economic conditions, I do not believe the public interest is served by tying up deposits and, perhaps worse, subjecting carriers to the risk of having to produce billions of dollars on short notice if the Commission prevails in the U.S. Supreme Court. These factors have produced a financial overhang that makes it difficult for carriers to make much-needed infrastructure investments and service upgrades. Today's action by the Commission should provide relief from these constraints. It will allow carriers to use deposit money more productively and enhance their ability to attract additional capital, thus ultimately benefiting consumers.

SEPARATE STATEMENT OF COMMISSIONER KEVIN J. MARTIN

Re: Disposition of Down Payment and Pending Applications By Certain Winning Bidders in Auction No. 35; Requests for Refunds of Down Payments Made in Auction No. 35, WT Docket No. 02-276

Today the Commission finally takes action to relieve the winning bidders in Auction No. 35 of their obligations. The history of this Auction and the commensurate litigation has been long and tortured.

This spring the Commission refunded a substantial portion of the monies on deposit to the winning bidders, but left their obligations in place. In light of the on-going economic burden of these obligations and the continuing litigation, the Commission should not **keep** these obligations in place any **longer**.

Indeed, I have long thought that the Commission could and should provide an additional stimulus to the industry and the economy as a whole by relaxing these obligations.

I dissent in part, however, to the decision's requirement that carriers withdraw from the entire auction to be relieved of any of their obligations. I do not see a need to require carriers to make a single election for all of the markets awarded at auction as a condition to withdrawing from any one market.

My hope is that today's decision provides Eligible Auction 35 winners with finality and the certainty necessary to "lay the foundation for renewed investment, innovation, and job producing growth, both in the telecommunications industry and in the economy as a whole."

¹ Letter from Secretary of Commerce Donald L. Evans to Chairman Michael K. Powell (Oct. 10, 2002).